

AMENDED IN ASSEMBLY APRIL 26, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 949

Introduced by Assembly Member Krekorian

February 22, 2007

An act to ~~add Sections 1569.682 and 1569.683 to~~ amend Sections 1569.651, 1569.884, 1569.886 of, and to add Section 1569.682 to, the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 949, as amended, Krekorian. Residential care facilities for the elderly: resident transfers.

Existing law provides for the licensure and regulation of residential care facilities for the elderly, as defined, by the State Department of Social Services, *including, among other things, regulation of admissions procedures and agreements*. Under existing law, a violation of any of these provisions is punishable as a misdemeanor.

This bill would require a licensed residential care facility for the elderly, prior to transferring a resident to another facility or to an independent living arrangement as a result of the forfeiture of a license, or a change in the use of the facility pursuant to an eviction by the department, to take all reasonable steps to transfer affected residents safely, and minimize possible trauma by taking specified actions relating to resident notification and transfer and relocation planning, as prescribed. The bill would require a facility, if 7 or more residents of the facility will be transferred as a result of the forfeiture of a license

or the change of use of a facility, to submit a proposed relocation plan for the affected residents to the department for review, and would require the department to approve or disapprove the plan. *The bill would also require an admission agreement to include an explanation of the facility's relocation evaluation and plan, as provided, and a statement of the licensee's responsibilities and the resident's rights in the event of an eviction.*

~~The bill would also require the department to annually prepare and submit to the relevant legislative policy committees a report on the number of residential care facilities for the elderly that transfer residents of the facility in accordance with the requirements of the bill.~~

Existing law requires that if a licensee of a residential care facility for the elderly charges a preadmission fee in excess of \$500, it is refundable under certain conditions, as provided.

This bill require that if a resident of a licensed residential care facility for the elderly is evicted, as provided, the resident is entitled to a refund of paid preadmission fees in excess of \$500, in accordance with specified conditions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1569.651 of the Health and Safety Code
- 2 is amended to read:
- 3 1569.651. (a) A licensee of a residential care facility for the
- 4 elderly shall not require any form of preadmission fee or deposit
- 5 from a recipient under the State Supplementary Program for the
- 6 Aged, Blind and Disabled (Article 5 (commencing with Section
- 7 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and
- 8 Institutions Code) who applies for admission to the facility.
- 9 (b) If a licensee charges a preadmission fee, the licensee shall
- 10 provide the applicant or his or her representative with a written
- 11 general statement describing all costs associated with the
- 12 preadmission fee charges and stating that the preadmission fee is

1 refundable. The statement shall describe the conditions for the
2 refund as specified in subdivision (g). A licensee shall only charge
3 a single preadmission fee as defined in subdivision (e) per resident
4 admission.

5 (c) A licensee of a residential care facility for the elderly shall
6 not require, request, or accept any funds from a resident or a
7 resident's representative that constitutes a deposit against any
8 possible damages by the resident.

9 (d) Any fee charged by a licensee of a residential care facility
10 for the elderly, whether prior to or after admission, shall be clearly
11 specified in the admission agreement.

12 (e) For the purposes of this section, "preadmission fee" means
13 an application fee, processing fee, admission fee, entrance fee,
14 community fee, or other fee, however designated, that is requested
15 or accepted by a licensee of a residential care facility for the elderly
16 prior to admission.

17 (f) This section shall not apply to licensees of residential care
18 facilities for the elderly that have obtained a certificate of authority
19 to offer continuing care contracts, as defined in paragraph (8) of
20 subdivision (c) of Section 1771.

21 (g) If the applicant decides not to enter the facility prior to the
22 facility's completion of a preadmission appraisal or if the facility
23 fails to provide full written disclosure of the preadmission fee
24 charges and refund conditions, the applicant or the applicant's
25 representative shall be entitled to a refund of ~~100 percent~~ 100
26 percent of the preadmission fee.

27 (h) Unless subdivision (g) applies, preadmission fees in excess
28 of five hundred dollars (\$500) shall be refunded according to the
29 following:

30 (1) If the applicant does not enter the facility after a
31 preadmission appraisal is conducted, the applicant or the
32 applicant's representative shall be entitled to a refund of at least
33 80 percent of the preadmission fee amount in excess of five
34 hundred dollars (\$500).

35 (2) If the resident leaves the facility for any reason during the
36 first month of residency, the resident shall be entitled to a refund
37 of at least 80 percent of the preadmission fee amount in excess of
38 five hundred dollars (\$500).

39 (3) If the resident leaves the facility for any reason during the
40 second month of residency, the resident shall be entitled to a refund

1 of at least 60 percent of the preadmission fee amount in excess of
2 five hundred dollars (\$500).

3 (4) If the resident leaves the facility for any reason during the
4 third month of residency, the resident shall be entitled to a refund
5 of at least 40 percent of the preadmission fee amount in excess of
6 five hundred dollars (\$500).

7 (5) The facility may, but is not required to, make a refund of
8 the preadmission fee for residents living in the facility for four or
9 more months.

10 (i) (1) *Notwithstanding subdivision (g), if a resident is evicted*
11 *by a facility pursuant to subdivision (a) of Section 1569.682, the*
12 *resident or the resident's legal representative shall be entitled to*
13 *a refund of preadmission fees in excess of five hundred dollars*
14 *(\$500) in accordance with all of the following:*

15 (A) *A 100 percent refund if preadmission fees were paid within*
16 *six months of notice of eviction.*

17 (B) *A 75 percent refund if preadmission fees were paid more*
18 *than six months but not more than 12 months before notice of*
19 *eviction.*

20 (C) *A 50 percent refund if preadmission fees were more than*
21 *12 months but not more than 18 months before notice of eviction.*

22 (D) *A 25 percent refund if preadmission fees were paid more*
23 *than 18 months but less than 25 months before notice of eviction.*

24 (2) *No preadmission refund is required if preadmission fees*
25 *were paid 25 months or more from the notice of eviction.*

26 (3) *The preadmission refund required by this subdivision shall*
27 *be paid within 15 days of issuing the eviction notice.*

28 **SECTION 1.**

29 SEC. 2. Section 1569.682 is added to the Health and Safety
30 Code, to read:

31 1569.682. (a) A licensee of a licensed residential care facility
32 for the elderly shall, prior to transferring a resident of the facility
33 to another facility or to an independent living arrangement as a
34 result of the forfeiture of a license, as described in subdivision (a),
35 (b), or (f) of Section 1569.19 or change of use of the facility
36 pursuant to an eviction by the department, in accordance with the
37 department's the department's regulations, take all reasonable
38 steps to transfer affected residents safely and to minimize possible
39 transfer trauma, and shall, at a minimum, do all of the following:

1 (1) Prepare an evaluation of the relocation needs of each resident
2 to be transferred, which shall include consideration of the proximity
3 to the resident's responsible person and a determination of the
4 most appropriate and available type of future care and services for
5 the resident. The evaluation shall be completed prior to giving
6 written notice of transfer to the resident or his or her legal
7 representative, and shall also include a recommendation regarding
8 the type of facility that would best meet the resident's needs, and
9 a list of facilities that are available and adequate to meet the
10 resident's needs., *which shall include both of the following:*

11 (2) Discuss the relocation evaluation with the resident or his or
12 her legal representative within 30 days of providing the written
13 notice as required by subdivision (b), and include a copy of the
14 relocation evaluation in the resident's records for transfer. If the
15 resident or his or her legal representative chooses to make a transfer
16 prior to completion of the relocation evaluation, the residential
17 care facility for the elderly shall inform the resident or his or her
18 legal representative, in writing, of the facility's obligation to
19 provide a relocation evaluation.

20 (3) Rebate to the resident or his or her legal representative a
21 proportional per diem amount of any prepaid monthly fees, if the
22 resident leaves the residential care facility for the elderly before
23 the end of the month for which fees have been prepaid. This rebate
24 shall be paid no later than the day the resident leaves the residential
25 care facility for the elderly.

26 (4) Pay a relocation fee of two thousand five hundred dollars
27 (\$2,500) to each resident living at the facility at the time that the
28 written notice of transfer described in subdivision (b) is given,
29 within 10 days of service of the written notice of transfer, if the
30 resident is required to transfer to a new facility or another
31 independent living arrangement.

32 (b) (1) Prior to transferring a resident, the facility shall give
33 written notice to each affected resident or his or her legal
34 representative at least 90 days in advance of the transfer, stating
35 the specific reason or reasons for the transfer, and advising the
36 resident or his or her legal representative of the intended transfer
37 in accordance with the requirements in subdivision (a). The notice
38 shall also include a written relocation evaluation for each affected
39 resident prepared pursuant to paragraph (1) of subdivision (a). If
40 the transfer is made pursuant to subdivision (c), the notice shall

1 ~~inform the resident or his or her legal representative that the~~
2 ~~approved relocation plan is available to the resident or his or her~~
3 ~~legal representative free of charge, upon request.~~

4 ~~(2) Upon issuing the written notice pursuant to paragraph (1),~~
5 ~~a facility shall not accept new residents or enter into new admission~~
6 ~~agreements.~~

7 *(A) Recommendations on the type of facility that would meet*
8 *the needs of the resident based on the current service plan.*

9 *(B) A list of facilities in the area that meet the resident's present*
10 *needs, taking into consideration the proximity to the resident's*
11 *responsible person.*

12 *(2) Provide each resident or the resident's responsible person*
13 *with a written notice no later than 90 days before the intended*
14 *eviction. The notice shall include all of the following:*

15 *(A) The reason for the eviction, with specific facts to permit a*
16 *determination of the date, place, witnesses, and circumstances*
17 *concerning the reasons.*

18 *(B) A copy of the resident's current service plan.*

19 *(C) The relocation evaluation.*

20 *(D) A list of licensed residential care facilities for the elderly*
21 *in the area.*

22 *(E) A list of referral agencies.*

23 *(F) The right of the resident or resident's legal representative*
24 *to contact the department to investigate the reasons given for the*
25 *eviction pursuant to Section 1569.35.*

26 *(3) Discuss the relocation evaluation with the resident and his*
27 *or her legal representative within 30 days of issuing the notice of*
28 *eviction.*

29 *(4) Submit a written report of any eviction to the licensing*
30 *agency within five days.*

31 *(5) Upon issuing the written notice of eviction, a facility shall*
32 *not accept new residents or enter into new admission agreements.*

33 *(6) (A) For paid preadmission fees in excess of five hundred*
34 *dollars (\$500), the resident is entitled to a refund in accordance*
35 *with all of the following:*

36 *(i) A 100-percent refund if preadmission fees were paid within*
37 *six months of notice of eviction.*

38 *(ii) A 75-percent refund if preadmission fees were paid more*
39 *than six months but not more than 12 months before notice of*
40 *eviction.*

1 (iii) A 50-percent refund if preadmission fees were paid more
2 than 12 months but not more than 18 months before notice of
3 eviction.

4 (iv) A 25-percent refund if preadmission fees were paid more
5 than 18 months but less than 25 months before notice of eviction.

6 (B) No preadmission refund is required if preadmission fees
7 were paid 25 months or more from the notice of eviction.

8 (C) The preadmission refund required by this paragraph shall
9 be paid within 15 days of issuing the eviction notice.

10 (7) If the resident gives notice five days before leaving the
11 facility, the licensee shall refund to the resident or his or her legal
12 representative a proportional per diem amount of any prepaid
13 monthly fees at the time the resident leaves the facility and the unit
14 is vacated. Otherwise the licensee shall pay the refund within seven
15 days from the date that the resident leaves the facility and the unit
16 is vacated.

17 (8) Within 10 days of all residents leaving the facility, the
18 licensee, based on information provided by the resident or
19 resident's legal representatives, shall submit a final list of names
20 and new locations of all residents to the department and the local
21 ombudsman program.

22 (e)

23 (b) If seven or more residents of a residential care facility for
24 the elderly will be transferred as a result of the forfeiture of a
25 license or change in the use of ~~a residential care facility for the~~
26 ~~elderly~~ the facility pursuant to subdivision (a), the ~~facility licensee~~
27 shall submit a proposed relocation plan ~~for all of the affected~~
28 ~~residents~~ to the department for approval. The department shall
29 approve or disapprove the relocation plan, and monitor its
30 implementation, in accordance with the following requirements:

31 (1) Upon submission of the relocation plan, the ~~residential care~~
32 ~~facility for the elderly licensee~~ shall be prohibited from accepting
33 new residents and entering into new admission agreements for
34 new residents.

35 (2) ~~The relocation plan shall provide for implementation of the~~
36 ~~relocation services described in subdivision (a), and shall describe~~
37 ~~the availability of beds and other residential care facilities for the~~
38 ~~elderly in the area for residents to be transferred, and the proposed~~
39 ~~discharge process, and shall include a listing of community~~

resources, and a description of the staff available to assist in the transfers.

(2) *The relocation plan shall meet the requirements described in subdivision (a), and describe the staff available to assist in the transfers.*

(3) Within 30 15 working days of receipt, the department shall approve or disapprove the relocation plan prepared pursuant to this subdivision, and, if the department approves the plan, it shall become effective upon the date the department grants its written approval of the plan.

(4) If the department disapproves a relocation plan, the residential care facility for the elderly licensee may resubmit an amended plan, which the department shall promptly either approve or disapprove, within 10 working days of receipt by the department of the amended plan. If the department fails to approve a relocation plan, it shall inform the facility, in writing, of the reasons for the disapproval of the plan.

(5) Until such time that the department has approved a residential care facility for the elderly's licensee's relocation plan, the facility shall not issue a notice of transfer or require any resident to transfer.

~~(6) The residential care facility for the elderly shall also submit a copy of the relocation plan to the local ombudsman program for the facility at the same time the plan is submitted or resubmitted to the department, and shall submit to both the department and the local ombudsman program a final list of names and new locations of all residents who are relocated.~~

(6) Upon approval by the department, the licensee shall send a copy of the relocation plan to the local ombudsman program.

~~(d) (1) If a residential care facility for the elderly fails to provide the relocation services required by subdivisions (a) and (b), and,~~

(c) If a licensee fails to comply with the requirements of subdivision (a), and if the director determines that it is necessary to protect the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department shall take any necessary action to minimize trauma for the residents. The department shall contact any local agency that may have placement or advocacy responsibility for the residents, and shall work with those agencies to locate alternative placement sites, and contact relatives or other persons responsible

1 for the care of these residents. The department shall use physicians
2 and other medical or long-term care professionals deemed
3 appropriate by the department to provide onsite evaluation of the
4 residents and to assist in the transfer of residents.

5 (2) The department's participation in the relocation of residents
6 from a residential care facility for the elderly shall not relieve the
7 ~~facility licensee~~ of any responsibility under this section. A
8 ~~residential care facility for the elderly licensee~~ that fails to comply
9 with the requirements of this section shall be required to reimburse
10 the department for the cost of providing the relocation services. If
11 the ~~facility licensee~~ fails to provide the relocation services required
12 in subdivisions (a) and (b), and the department is not able to
13 arrange for the provision of those services required by those
14 subdivisions, then the department shall request that the Attorney
15 General's office, the city attorney's office, or the local district
16 attorney's office seek injunctive relief and damages in the same
17 manner as provided for in Chapter 5 (commencing with Section
18 17200) of Part 2 of Division 7 of the Business and Professions
19 Code.

20 ~~(e) Any person, firm, partnership or corporation who owns,~~
21 ~~operates, establishes, manages, conducts, or maintains a residential~~
22 ~~care facility for the elderly who fails to comply with the~~

23 (d) A licensee who fails to comply with the requirements of this
24 section shall be liable for the imposition of civil penalties in the
25 amount of one hundred dollars (\$100) per resident per day for each
26 day that the ~~facility licensee~~ is in violation of this section, until
27 such time that the violation has been corrected.

28 (f)

29 (e) A resident of a residential care facility for the elderly covered
30 under this section, may bring a civil action against any person,
31 firm, partnership or corporation who owns, operates, establishes,
32 manages, conducts, or maintains a residential care facility for the
33 elderly who violates the rights of a resident, as set forth in this
34 section. Any person, firm, partnership or corporation who owns,
35 operates, establishes, manages, conducts, or maintains a residential
36 care facility for the elderly who violates this section shall be
37 responsible for the acts of the facility's employees and shall be
38 liable for costs and attorney fees. Any such residential care facility
39 for the elderly may also be enjoined from permitting the violation

1 to continue. The remedies specified in this section shall be in
2 addition to any other remedy provided by law.

3 (h) This section does not apply to a *facility licensee* that has
4 obtained a certificate of authority to offer continuing care contracts,
5 as defined in paragraph (8) of subdivision (c) of Section 1771.

6 ~~SEC. 2. Section 1569.683 is added to the Health and Safety~~
7 ~~Code, to read:~~

8 ~~1569.683. The department shall annually prepare and submit~~
9 ~~to the relevant policy committees of the Legislature a report on~~
10 ~~the number of residential care facilities for the elderly that transfer~~
11 ~~residents of the facility in accordance with the requirements of~~
12 ~~Section 1569.682.~~

13 *SEC. 3. Section 1569.884 of the Health and Safety Code is*
14 *amended to read:*

15 1569.884. The admission agreement shall include all of the
16 following:

17 (a) A comprehensive description of any items and services
18 provided under a single fee, such as a monthly fee for room, board,
19 and other items and services.

20 (b) A comprehensive description of, and the fee schedule for,
21 all items and services not included in a single fee. In addition, the
22 agreement shall indicate that the resident shall receive a monthly
23 statement itemizing all separate charges incurred by the resident.

24 (c) A facility may assess a separate charge for an item or service
25 only if that separate charge is authorized by the admission
26 agreement. If additional services are available through the facility
27 to be purchased by the resident that were not available at the time
28 the admission agreement was signed, a list of these services and
29 charges shall be provided to the resident or the resident's
30 representative. A statement acknowledging the acceptance or
31 refusal to purchase the additional services shall be signed and dated
32 by the resident or the resident's representative and attached to the
33 admission agreement.

34 (d) An explanation of the use of third-party services within the
35 facility that are related to the resident's service plan, including,
36 but not limited to, ancillary, health, and medical services, how
37 they may be arranged, accessed, and monitored, any restrictions
38 on third-party services, and who is financially responsible for the
39 third-party services.

1 (e) A comprehensive description of billing and payment policies
2 and procedures.

3 (f) The conditions under which rates may be increased pursuant
4 to Section 1569.655.

5 (g) The facility's policy concerning family visits and other
6 communication with residents, pursuant to Section 1569.313.

7 (h) The facility's policy concerning refunds.

8 (i) Conditions under which the agreement may be terminated.

9 (j) *An explanation of the facility's responsibility to prepare a*
10 *relocation evaluation, relocation plan, and to provide notice in*
11 *the case of an eviction pursuant to Section 1569.682.*

12 *SEC. 4. Section 1569.886 of the Health and Safety Code is*
13 *amended to read:*

14 1569.886. (a) The admission agreement shall not include any
15 ground for involuntary transfer or eviction of the resident unless
16 those grounds are specifically enumerated under state law or
17 regulation.

18 (b) The admission agreement shall list the justifications for
19 eviction permissible under state law or regulation, exactly as they
20 are worded in the applicable law or regulation.

21 (c) The admission agreement shall include an explanation of
22 the resident's right to notice prior to an involuntary transfer,
23 discharge, or eviction, the process by which the resident may appeal
24 the decision and a description of the relocation assistance offered
25 by the facility.

26 (d) *The admission agreement shall state the responsibilities of*
27 *the licensee and the rights of the resident when a facility evicts*
28 *residents pursuant to Section 1569.682.*

29 ~~SEC. 3.~~

30 *SEC. 5.* No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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